

REMARKS

The Office Action dated February 5, 2009 has been received and reviewed. This response is submitted along with a Petition for a Two-Month Extension of Time.

Claims 1 and 11 have been amended to correct certain formal errors. No new matter has been added.

The applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks.

Oath and Declaration

The Examiner objected to the Oath and Declaration because the Examiner alleged that it was unsigned by the inventors. The applicants respectfully direct the Examiner's attention to the properly executed Oath and Declaration signed by each and every inventor and filed in the USPTO along with the PCT application on December 23, 2004. In view of the properly executed Oath and Declaration, the applicants request that the Examiner withdraw this objection.

Specification

The Examiner objected to the Specification because the Abstract did not begin on a separate sheet of paper in accordance with 37 C.F.R. §1.52(b)(4). The applicants submit herewith a Substitute Abstract of the Disclosure on a separate sheet of paper, thus obviating the objection.

Claim Objections

The Examiner objected to claim 11 for failing to end in a period. This claim has been amended to correct this informality, thus obviating the objection.

Claim Rejections- 35 U.S.C. §112

The Examiner rejected claims 1-27 under 35 U.S.C. §112, second paragraph as being indefinite because the claim term “the least 70%” is unclear and indefinite. The applicants have amended claim 1 herein to state “at least 70%”, which limitation can be found throughout the specification, and in particular, on page 4, lines 24-26. The applicants submit that the claim is now clear, and respectfully request that the Examiner withdraw this rejection.

Claim Rejections- 35 U.S.C. §103

The Examiner rejected claims 1-16, 19-23 and 25-27 under 35 U.S.C. §103(a) as obvious over Lykke et al. (US 6,242,405); and claims 17, 18 and 24 as obvious over Lykke et al. in view of Gutierrez et al. (US 5,739,093). The applicants respectfully traverse these rejections.

The Examiner stated that while Lykke failed to teach the migration speed of the particles, viscosity or density of the composition, salt content of the non-aqueous component, ratio of enzyme present in gel and the enzyme present in the particles, the percentage of starch and the difference in density of the gel and the particles, it would have been obvious to one of skill in the art to optimize the concentrations of the components to arrive at the claimed composition. The Examiner further reasoned that

one of ordinary skill in the art would have been motivated to optimize these parameters to arrive at the optimal cleaning properties through controlled enzymatic release in the wash cycle to prevent enzyme degradation during storage as taught by Lykke. The applicants submit that a *prima facie* case of obviousness is rebutted because the presently claimed invention exhibits unexpectedly superior results when compared with compositions according to Lykke.

The presently claimed invention exhibits unexpected superiority with regard to enzyme stability when compared with composition according to Lykke. For an illustration of this expected benefit, the applicants direct the Examiner's attention to Example 2 of Lykke, bridging columns 34 and 35. Here, Lykke compares the stability of an enzyme that is both encapsulated and unencapsulated. Not surprisingly, the encapsulated enzyme shows higher stability. Specifically, Lykke's best results report a composition that retains 67% of its enzyme activity over 7 days at 30°C. (See Lykke, Example 2, Formula A). However, compositions according to the presently claimed invention exhibit much higher enzyme stability, even after a longer period when stored at the same, or harsher, conditions.

Tables I and II of the presently claimed invention show that enzyme activity after 12 weeks of storage at both 20 °C, 30 °C and even 35°C is greater than compositions of Lykke. In fact, even after 12 weeks of storage at 35°C, compositions according to the presently claimed invention exhibited enzyme particle stability of 89.1% and 96.4%. Lykke's compositions do not come close to this level of stability, and a person of ordinary skill in the art would have been surprised that this stability could be achieved in view of Lykke's results. Accordingly, the presently claimed invention shows unexpected

superiority in enzyme stability. Unexpected superiority in any property would be sufficient to prove nonobviousness. *See, for example, In re Chupp*, 2 USPQ2d 1437, 1439 (Fed. Cir. 1987) (“Evidence that a [product] is unexpectedly superior in *one* of a spectrum of common properties, as here, can be enough to rebut a *prima facie* case of obviousness.”)

There is no teaching or suggestion in Lykke that a composition according to the presently claimed invention, wherein the composition comprises a non-aqueous component having a salt content of at least 70%, should bring about the demonstrated increase in enzyme stability. Accordingly, the data in the instant specification must be considered to be surprising and, therefore, unexpected, and, thus, also as objective evidence of nonobviousness. Although these data are not in declaration form, consistent with the rule that *all* evidence of nonobviousness must be considered when assessing patentability, the Examiner must consider data in the specification in determining whether the claimed invention provides unexpected results. *In re Soni*, 34 USPQ2d 1684, 1687 (Fed. Cir. 1995).

In view of the foregoing, Applicants respectfully submit that the Examiner would be fully justified to reconsider and withdraw this rejection as well. An early notice that this rejection has also been reconsidered and withdrawn is also earnestly solicited.

Based on the foregoing reasons, the applicants respectfully request that the Examiner withdraw these rejections. The applicants believe the claims are now in condition for allowance, and respectfully request such favorable action. If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the phone number listed below.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully requests that this be considered a petition therefore. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

NORRIS MCLAUGHLIN & MARCUS, P.A.

By /Mark D. Marin/
Mark D. Marin
Attorney for Applicants
Reg. No. 50,842
875 Third Avenue, 18th Floor
New York, New York 10022
Tel. 212-808-0700